(2)

No. 06-154

FILED
SEP 1 - 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In the
Supreme Court of the United States

TAMMY SABO,

Petitioner,

v.

STEVE CANTERBURY, individually and in his capacity as Director, WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY; JAMIE SPENCER, individually and in his capacity as Warden; NORTHERN REGIONAL JAIL AND CORRECTIONAL FACILITY

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

DAVID L. WYANT, ESQUIRE
Counsel of Record
BAILEY & WYANT, PLLC
1219 CHAPLINE STREET
WHEELING, WV 26003
(304) 233-3100

Counsel for Respondents

Becker Gallagher Legal Publishing, Inc. 800.890.5001

QUESTIONS PRESENTED FOR REVIEW

I. Whether the district court committed an error of law in granting summary judgment to Canterbury and Spencer in finding that Tammy Sabo failed to establish objectively the deprivation of a basic human need that was sufficiently serious in violation of her Eighth Amendment right against cruel and unusual punishment pursuant to 42 U.S.C. § 1983 while she was periodically incarcerated at the Northern Regional Jail, which decision was affirmed by the United States Court of Appeals for the Fourth Circuit.

II. Whether the district court committed an error of law in granting summary judgment to Canterbury and Spencer in finding that Tammy Sabo failed to establish that the prison officials subjectively acted with a sufficiently culpable state of mind in violation of her Eighth Amendment right against cruel and unusual punishment pursuant to 42 U.S.C. § 1983 while she was periodically incarcerated at the Northern Regional Jail, which decision was affirmed by the United States Court of Appeals for the Fourth Circuit.

III. Whether the district court committed an error of law in granting summary judgment to Canterbury and Spencer pursuant to the doctrine of qualified immunity finding that even if Tammy Sabo had established a constitutional violation, the conduct of Canterbury and Spencer did not create a pervasive and unreasonable risk of constitutional injury, which decision was affirmed by the United States Court of Appeals for the Fourth Circuit.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

SUMMARY OF THE ARGUMENT 11

STANDARD OF REVIEW 12

REASONS FOR DENYING THE PETITION 12

I. The district court correctly granted summary judgment to Canterbury and Spencer in finding that Tammy Sabo failed to establish a violation of her Eighth Amendment right against cruel and unusual punishment pursuant to 42 U.S.C. §1983 while she was periodically incarcerated at the Northern Regional Jail. The United States Court of Appeals for the Fourth Circuit affirmed the judgment of the District Court 12

A. Failure to provide evidence of objective deprivation of basic human need which was sufficiently serious 14

B. Lack of deliberate indifference by Spencer and Canterbury 19

II. The district court correctly held that Canterbury and Spencer were entitled to qualified immunity with respect to the claims asserted by Tammy Sabo pursuant to 42 U.S.C. §1983 in finding that even if Tammy Sabo had established a constitutional violation, the conduct of Canterbury and Spencer did not create a pervasive and unreasonable risk of constitutional injury 24

III. Petitioner's misstatement of facts 27

CONCLUSION 30

TABLE OF AUTHORITIES

FEDERAL CASES:

De'Lonta v. Angelone,
330 F.3d 630 (4th Cir. 2003) 2, 14, 20

Estelle v. Gamble,
429 U.S. 97 (1976) 13, 20

Farmer v. Brennan,
511 U.S. 825 (1994) 20, 23

Harlow v. Fitzgerald,
457 U.S. 800 (1982) 24

Miltier v. Beorn,
896 F.2d 848 (4th Cir. 1990) 20

Pritchett v. Alford,
973 F.2d 307 (4th Cir. 1992) 24

Shaw v. Stroud,
13 F.3d 791 (4th Cir. 1994),
cert. denied 513 U.S. 813 (1994) 25, 26, 27

U. S. Fidelity & Guaranty Company v. Guenther,
281 U.S. 34, 50 S.Ct. 165 (1930) 9

Wilson v. Seiter,
501 U.S. 294 (1991) 13

UNITED STATES CONSTITUTION:

U.S. Const. amend. VIII 2, 11, 12, 13, 14, 19, 23
U.S. Const. amend. XIV 13

FEDERAL STATUTES:

28 U.S.C. § 1254 12
42 U.S.C. §1983 . . . . . 1, 2, 3, 12, 13, 19, 24

STATE STATUTES:

W. Va. Code §§31-20-1, et seq 1

STATEMENT OF THE CASE

Tammy Sabo initiated a civil rights action pursuant to 42 U.S.C. §1983 on or about June 20, 2003 against Steven Canterbury, individually and as Director of the West Virginia Jail and Correctional Facility Authority, James Spencer, individually and as Warden of the Northern Regional Jail, the Northern Regional Jail and Correctional Facility Authority and the West Virginia Regional Jail and Correctional Facility Authority alleging that she was denied proper medical care and confinement conditions during periodic incarcerations at the Northern Regional Jail.[1] Additionally, Ms. Sabo alleged a number of state law claims also pertaining to her medical care and confinement conditions at the Northern Regional Jail.[2]

On or about June 16, 2005, the Honorable Frederick P. Stamp, Jr. issued a Memorandum Opinion and Order Granting the Defendants' Motion for Summary Judgment.[3]

---

[1] The Northern Regional Jail and Correctional Facility is a part of the Regional Jail system under the control of the West Virginia Regional Jail and Correctional Facility Authority and provides facilities for incarceration of individuals convicted of crimes not requiring confinement in the State prison system from the counties of Hancock, Brooke, Ohio, Marshall and Wetzel. *See: W. Va. Code §31-20-1 et seq.*

[2] The petitioner does not raise these State Court issues in her petition except simply to identify the State Court claims under the "Questions Presented For Review" section on page i in the petition. These issues will not be further addressed in this Brief in Opposition to Petition.

[3] The District Court had previously dismissed the constitutional claims against the individual defendants in their official capacities and the agency defendants. These claims also were not the subject

The district court held that Ms. Sabo failed to establish the elements necessary to maintain the § 1983 claim. The District Court held that the plaintiff could not meet the objective prong of an Eighth Amendment claim. Specifically, Ms. Sabo did not show a "serious or significant physical or emotional injury resulting from the challenged conditions."[4] Further, the District Court held that Ms. Sabo could not satisfy the subjective prong of an Eighth Amendment claim to establish that the jail officials showed deliberate indifference. Additionally, the Court held that Canterbury and Spencer were entitled to qualified immunity. On March 30, 2006, the United States Court of Appeals for the Fourth Circuit affirmed the District Court's decision and on April 28, 2006, denied Appellant's Motion for rehearing En Banc.

STATEMENT OF FACTS

On March 3, 1999, Tammy Sabo pled guilty to domestic battery second and was sentenced by Ohio County Magistrate Rose M. Humway to serve a sentence of six months and one day over 91 consecutive weekends at the Northern Regional Jail. *Magistrate Court of Ohio County Order (App., Vol. I, p. 69a).* Ms. Sabo began serving her sentence on March 12, 1999. After serving two weekends, Ms. Sabo filed a petition requesting she be permitted to finish her sentence on home confinement. On December 13, 1999, the Circuit Court denied Ms. Sabo's Petition for Alternative Sentence and immediately reimposed the original sentence giving credit for

---

of appeal and will not be further addressed in this Brief, leaving the constitutional claims against Canterbury and Spencer in their individual capacities as the only claims subject to the Petition herein and this Brief in Opposition to the Petition.

[4] The District Court quoted *De' Lonta v. Angelone*, 330 F. 3d 630, 634 (4th Circuit 2003).

the 2 weekends previously served. *December 13, 1999 Order (App., Vol. I, pp. 70a-71a).* On December 17, 1999, a "MEDICATION ORDER" was issued by Ohio County Magistrate Humway directing the Northern Regional Jail "...to comply with medical orders/requests and provide the prescription medicine to Tammy Sabo from her treating physician, Warren Goodrich, D.O. of Northwood Health Systems". *Medication Order, December 17, 1999 (App., Vol. I, pp. 72a-73a).*

On December 3, 1999, Ms. Sabo's treating physician, Warren Goodrich, D.O., issued a "To Whom it May Concern" letter indicating "it would be of upmost benefit if consideration could be given to keeping her [sic] isolation during the time of her confinement." *December 3, 1999 letter (App. Vol. III, p. 1142a).* On or about February 29, 2000, Dr. Goodrich issued a second "To Whom It May Concern" letter encouraging isolation for Ms. Sabo while serving her time in jail. *February 29, 2000 letter (App., Vol. III, p. 1143a).* On or about May 17, 2000, Ms. Sabo's sentence was modified to allow her to serve her two day per week sentence on Wednesdays through Fridays to ensure that a mental health provider was available during her incarceration. She completed her sentence on June 23, 2001 without injury or incident.

On June 20, 2003, Tammy Sabo filed her civil complaint in the United States District Court for the Northern District of West Virginia. Ms. Sabo claimed that Respondents Canterbury and Spencer were indifferent to her medical needs in violation of 42 U.S.C. §1983. Specifically, Ms. Sabo alleged that Canterbury and Spencer as well as the Jail employees failed to follow the suggestions of her treating physician, Warren P. Goodrich, D.O., that she be kept isolated during her periodic confinements, in light of her medical/mental conditions. Ms. Sabo also alleged that the

failure to follow Dr. Goodrich's recommendation increased her risk of suicide while she was incarcerated. Further, Ms. Sabo alleged that the jail personnel did not administer her prescription medications at the proper time or in the proper manner.

While serving her sentence, Ms. Sabo never filed any grievances with the jail. A formal grievance procedure was in effect during the entire period of Tammy Sabo's incarceration and she could have raised medication and/or housing confinement issues. Ms. Sabo was made aware of the grievance procedure as she received a prisoner's handbook on each occasion that she reported to the jail to serve her intermittent sentence (approximately 91 occasions). *Jail Documentation (App., Vol. I, pp. 74a-124a).* Sabo testified that she never tried to file a grievance. *(App., Vol. II, p. 339a).* In explanation, Sabo stated that she believed that she was not there long enough to file a grievance because she believed that two days was not enough time for the grievance to be decided. *(App., Vol. II, pp. 338a).* However, the petitioner agreed that she was there for two days each week over a long period of time which would allow for the resolution of any grievance. *(App. Vol. II at p. 339a).*

Uncontroverted evidence shows that on each occasion when Ms. Sabo presented at the jail to serve her 2 day intermittent sentence, she was evaluated by the correctional booking officer as well as the on-staff nurse who evaluated her for physical and mental health conditions, including the potential for suicide. *Initial Classification Summary documents (App., Vol. II, pp. 389a-428a); Prime Care Receiving Screening/Health Assessment documents (App., Vol. II, pp. 429a-602a); Prime Care Intake Mental Health Screening documents (App., Vol. II, pp. 603a-670a).* The medical evaluations by the medical professionals were performed as a part of the policies of the Jail. The medical

evaluations were performed by medical employees of Prime Care Medical of West Virginia, Inc. ("Prime Care"), who had a contract to provide medical care at the Northern Regional Jail. Prime Care is approved and certified by the National Commission on Correctional Health Care. *(App. Vol. III, pp. 1171a-1172a).* Additionally, she was evaluated by correctional officers of the jail, who had received training with regard to booking procedures, classification of inmates and suicide. *Jail documentation (App., Vol. II, pp. 671a-699a).* The evaluation by the booking officers at the beginning of each of Ms. Sabo's confinements also was part of the policies of the Jail. *Jail documentation (App., Vol. II, pp. 671a-699a).* On several occasions, it was determined that Ms. Sabo was deemed to be suicidal when she presented herself to the jail for her incarceration and therefore was kept in a holding cell under suicide watch with 15 minute periodic observations by jail personnel. *Jail documentation (App., Vol. II, pp. 832a-860a).*[5]

The evidence further shows that Ms. Sabo regularly received her medications while she was serving the two day intermittent sentence. *Prime Care Medical documentation (App., Vol. II, pp. 861a-892a).* According to the testimony of Kandi S. Blake, the medical administrator for Prime Care at the Northern Regional Jail, the charting reflects that Tammy Sabo did receive her medication. At times, there were

---

[5] In the Petition, Ms. Sabo cites her own testimony indicating that there were occasions when she was deemed suicidal but was placed in the general population and checked every hour or so. *See: Petition at p. 22.* Ms. Sabo's testimony is uncorroborated. Rather, the documentary evidence in the case indicates that when Ms. Sabo was placed on suicide watch, she was held in a holding cell and checked on a 15-minute basis. *(App. Vol. II, pp. 834a-859a).*

chart entries indicating that Tammy Sabo refused her medication when offered. *(App. Vol. III, pp. 1257a-1258a).*

Importantly, during the five days of each week that she was not incarcerated at the Northern Regional Jail, Ms. Sabo admits that she never pursued any outside mental health or other treatment with respect to her claims of alleged mistreatment at the jail. *Sabo Deposition at pp. 85, 88, 94, 102, 113 (App., Vol. II, pp. 358a, 361a, 367a, 375a, 386a).* Ms. Sabo also admits that she did not receive and is not currently receiving any medical or psychiatric treatment as a result of her incarceration or the way she was treated in jail. *Sabo Deposition at p. 113 (App., Vol. II, p. 386a).*

Ms. Sabo has alleged that she had one conversation with Respondent Warden James Spencer regarding her claim that her afternoon medication was not being timely administered. *Sabo Deposition at pp. 74-76 (App., Vol. II, pp.347a-349a).* Mr. Spencer denies this conversation and there are no documents reflecting any such conversation. *Spencer Deposition at p. 71 (App., Vol. II, p. 770a).* Additionally, as previously stated, the *Petitioner* filed no grievances during her incarcerations. Further, there is no record of any medical or mental health treatment needed by Ms. Sabo as a result of an allegation of failure to timely provide medications to the *Petitioner. Sabo Deposition at p. 94 (App., Vol. II, p. 367a).*

Ms. Sabo admitted that she never spoke with Respondent Steven Canterbury, Director of the West Virginia Jail and Correctional Facility Authority, and did not know who he was at the time of her deposition. *Sabo Deposition at p. 77 (App., Vol. II, p. 350a).*

The developed testimony of Respondent James Spencer as well as Shar Murrin, Director of Inmate Services for the Northern Regional Jail, indicates that the letters of Ms. Sabo's treating physician, Warren Goodrich, D.O., were received

and considered by the staff at the jail. The testimony is that the staff did not believe that these letters constituted medication orders or requests and instead constituted suggestions by Dr. Goodrich. *Spencer Deposition at pp. 53-54, 61, 66-68 (App., Vol. II., pp. 752a-753a, 760a, 765a-767a) and Murrin Deposition at pp. 47-48, 57 and 103 (App., Vol. III, pp. 940a-941a, 950a, 996a).* The staff therefore followed the regular processes of the jail during the booking procedure including the mental health status evaluation by the Prime Care medical personnel, the booking evaluation by the trained correctional officers and a decision on housing classification was made each time Ms. Sabo presented herself to serve her weekly sentence. *See generally: Jail documentation (App., Vol. II, pp. 389a-670a).* As further consideration of Dr. Goodrich's letters, Shar Murrin contacted Magistrate Humway to discuss the Medication Order and to inform Humway of the jail's housing classification actions as it pertained to Ms. Sabo.[6] According to the uncontroverted testimony of Ms. Murrin, Magistrate Humway agreed with the procedures of the jail in that regard. *Murrin Deposition at pp.74, 77-78, 81 (App., Vol. III, pp. 967a, 970a-971a, 974a).*

On or about March 2, 2000, Magistrate Humway wrote to Ms. Sabo's criminal counsel, Public Defender Jack Wood, apparently following a conversation with Ms. Murrin and a motion filed by Ms. Sabo pertaining to the letters of Dr. Goodrich. *(App., Vol. III, p. 1152a).* The Jail was not copied on this correspondence and had no knowledge of the existence of this letter until after suit was filed in this matter, following Tammy Sabo's release. Magistrate Humway directed

---

[6] The Petitioner states that "This clear order was not followed by the jail." See: Petition at p. 6. There is however no support for this assertion in the record.

Attorney Wood to draft an Order regarding Dr. Goodrich's recommendations which she would review and comply with, if possible. Apparently, Attorney Wood never drafted such an Order and the Jail never received it. Thus, there was no Order in place related to the housing of Ms. Sabo while incarcerated. On the contrary, the Magistrate's directive to Attorney Wood to prepare a separate Order for her consideration on this issue confirms that the Magistrate's December, 1999 Medication Order did not encompass the December, 1999 and February 2000 Goodrich letters encouraging certain housing of Tammy Sabo.

Despite the Petitioner's contention otherwise, Magistrate Humway's Order dealt exclusively with administration of medication. There is no language in Magistrate Humway's Order which could be interpreted to refer to the Petitioner's contention that the Order contained a "direction that Sabo be isolated to minimize the effects with interaction with the general jail population."[7] The District Court Judge's Order states:

> "Similarly Magistrate Humway's order directs the jail to provide Sabo with medication, but does not require jail officials to keep her in isolation. The order simply states that the jail shall comply with the medical order/request." *(App. Vol. III, pp. 1425a-1426a).*

The order is in no way susceptible to more than one interpretation. The Order issued by Magistrate Humway is clearly titled "Medication Order." Further, there is no

---

[7] See: Petition at page 6.

mention of isolation in that Order whatsoever. *(App. Vol. I, pp. 72a-73a).*[8]

The author of these letters indicated that they were not orders. Dr. Goodrich stated that he had no authority to order isolation at the Northern Regional Jail. *Goodrich deposition at Page 89 (App. Vol. III, pp.1402a).* Additionally, Dr. Goodrich agreed that in light of Tammy Sabo's psychological problem, it would be better to house her in a cell in the general population than in an insolation cell available in the booking area. The isolation cells in the booking area had glass fronts and provided no privacy to the occupant. Dr. Goodrich stated that if he had to choose between the cells and general population, he believes the cell in the general population would be more appropriate to address his concerns.[9] *Goodrich deposition at Page 35-36 (App. Vol. III,*

---

[8] The Petitioner asserts that it was inappropriate for U. S. District Court Judge Stamp to apply the plain language of the Medication Order and not further interpret the plain language therein. However, it has long been the law that when a document's language is unambiguous, the court will apply the plain, ordinary or popular sense of the language. Unambiguous terms in a document take their plain, ordinary and popular meaning. *See: i.e., U. S. Fidelity & Guaranty Company v. Guenther,* 281 U.S. 34, 50 S.Ct. 165 (1930).

[9] The Petitioner asserts that this testimony of Dr. Goodrich pertains only to a hypothetical question. However, this testimony is based on the facts as developed in this case. Respondent Steven Canterbury, the Director of the West Virginia Regional Jail and Correctional Facility Authority, testified that there are two types of cells available at the Northern Regional Jail. Isolation housing is generally provided in the holding cells located in the booking area. There is heavy inmate and pedestrian traffic in this area and the cells "have a glass front on these cells. You don't have any

pp. 1348a-1349a).

Ms. Sabo's medical records indicate that she attempted suicide two times in 2000. The first attempt occurred on January 7, 2000, before she was to report to jail after her sentence was reinstated. *Sabo Deposition at pp. 22-23 (App., Vol. II, pp. 295a-296a).* Ms. Sabo does not allege that this suicide attempt occurred in any way as a result of her housing or treatment at the Northern Regional Jail. The second suicide attempt occurred on September 24, 2000. However, Ms. Sabo was not incarcerated on September 24, 2000 or on September 23, 2000. *Individual history for Sabo (App., Vol. III, pp. 1309a-1310a).* Ms. Sabo's medical records indicate that she became upset with her paramour in the evening of September 23 and attempted an overdose of Ambien. *Northwood Health System records (App., Vol. III, p. 1311a).* Progress Notes at the hospital on September 24, 2000 and September 25, 2000 note that her drug overdose suicide attempt pertained to conflicts with her boyfriend. *Northwood Health System records (App., Vol. III, p. 1312a-1313a).* Accordingly, the documented suicide attempts do not show that Ms. Sabo attempted suicide as a result of her complaints regarding medications or her housing assignments during her periodic incarcerations at the Northern Regional Jail. Dr. Goodrich testified that the only stressor mentioned prior to the September 2000 suicide attempt was her boyfriend. *(App., Vol. III, pp. 1346a).*

---

privacy for anything you do. Bathroom, et cetera." The other type of cell is located in the general population. These cells have doors with a small window on the door. "So if a person you see needs time out, time alone, they can have it simply by pulling the door shut...they are by themselves... They realize, well I can go in my cell and pull the door shut. It's something that's not hard for anyone to understand." *(App., Vol. I., pp. 213a-214a).*

SUMMARY OF ARGUMENT

Petitioner Sabo has alleged constitutional claims against Respondents Canterbury and Spencer in relation to her periodic incarceration at the Northern Regional Jail. However, the evidence developed in this matter does not support any allegation of wrongdoing by Canterbury, Spencer, or any jail employee. On the contrary, the overwhelming evidence demonstrates that Ms. Sabo's constitutional rights, health, and well-being were protected each time she presented herself to serve her two day per week sentence over 91 weeks. The jail documentation establishes that she received her prescription medication while incarcerated.[10] Further, Ms. Sabo suffered no physical or psychological injuries while serving her time in jail, nor did Ms. Sabo suffer an increased risk of a physical or psychological injury while serving her time in jail. In fact, Dr. Goodrich testified in regard to his note dated February 29, 2000 that Ms. Sabo was doing well serving the weekends in jail and was comfortable with her current roommate. *(App., Vol. III, p. 1338a)*. Thus, Ms. Sabo cannot establish any injury, constitutional or otherwise, or any other damages relating to her incarceration.

Accordingly, the Petitioner cannot prove an Eighth Amendment civil rights claim because she cannot prove an objective deprivation of a basic human need that was sufficiently serious, or that Canterbury and Spencer

---

[10] The Petitioner asserts at page 12 of the Petition that the LPN supervisor admitted that the charting could be interpreted to reflect that Sabo did not receive her medications regularly. However, this assertion does not accurately reflect the testimony of the medical administrator Kandi Blake. Ms. Blake testified she could not state that Sabo was not getting her 2:00 p.m. medication. *(App. Vol. III, p. 1258a)*.

subjectively acted with deliberate indifference to such basic human need deprivation. Also, there is no evidence that would cause Canterbury and Spencer to lose the qualified immunity provided to governmental or public officials. As such, the Respondents are entitled to judgment as a matter of law.

STANDARD OF REVIEW

28 U.S.C. § 1254 (1): "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods: (1) by Writ of Certiorari granted upon the Petition of any party of any civil or criminal case, before or after rendition of judgment or decree."

REASONS FOR DENYING THE PETITION

I. The district court correctly granted summary judgment to Canterbury and Spencer in finding that Tammy Sabo failed to establish a violation of her Eighth Amendment right against cruel and unusual punishment pursuant to 42 U.S.C. §1983 while she was periodically incarcerated at the Northern Regional Jail. The United States Court of Appeals for the Fourth Circuit correctly affirmed the judgment of the District Court.

Ms. Sabo alleges that she suffers from psychological illnesses, including panic disorder, moderate agoraphobia and social phobia. She maintains that she did not properly receive medical care related to administration of her afternoon prescription nerve medication in either failing completely or to timely provide the medication. Ms. Sabo further alleges that her medications were crushed, were not always provided with food, and with too little water. The Petitioner also alleges her confinement conditions were inappropriate because she was not always isolated during her intermittent sentence and was placed with the general population despite an

encouragement by her treating physician that she remain isolated.

Despite Ms. Sabo's allegations of violations of her civil rights, the developed evidence simply fails to support any of Ms. Sabo's alleged claims. Ms. Sabo's claim for violation of her civil rights is brought pursuant to 42 U.S.C. §1983 which mandates liability for deprivation of rights, privileges, or immunities secured by the United States Constitution. Ms. Sabo's allegations stem from an alleged violation of the Eighth Amendment's prohibition against "cruel and unusual punishment" made applicable to the States through the Fourteenth Amendment.

The United States Supreme Court first addressed the issue of "cruel and unusual punishment" in the context of a prisoner's claim of inadequate medical care in the case of *Estelle v. Gamble*, 429 U.S. 97 (1976). Within that opinion, the Court held that "punishments...which involve the unnecessary and wanton infliction of pain" violate the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)*(internal citations omitted)*. In this respect, the Court established the standard that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment." *Id.* at 104-105.

In order to establish this type of Eighth Amendment violation, a prisoner must establish

> (1) that objectively the deprivation of a basic human need was "sufficiently serious," and
>
> (2) that subjectively the prison official acted with a "sufficiently culpable state of mind."

Wilson v. Seiter, 501 U.S. 294, 298 (1991).

A. Failure to provide evidence of objective deprivation of basic human need which was sufficiently serious.

In her civil rights claim, Ms. Sabo must first establish the objective component that the alleged deprivation of medical care and/or confinement conditions was "sufficiently serious." "[O]nly extreme deprivations are adequate to satisfy the objective component of an Eighth Amendment claim regarding conditions of confinement. In order to demonstrate such an extreme deprivation, a prisoner must allege 'a serious or significant physical or emotional injury resulting from the prisoner's exposure to the challenged conditions, or demonstrate a substantial risk of such serious harm resulting from the prisoner's exposure to the challenged conditions." *De'Lonta v. Angelone*, 330 F.3d 630, 634 (4th Cir. 2003)*(internal citations omitted)*.

Ms. Sabo cannot establish the first prong of an Eighth Amendment claim that objectively the deprivation of a basic human need was "sufficiently serious." The facts developed in discovery do not support Sabo's claims and indeed Sabo cannot show serious or significant physical or emotional injury resulting from the challenged conditions. *See: De'Lonta v. Angelone*, 330 F.3d 630, 634(4th Cir. 2003).

Ms. Sabo has testified that she has not incurred any medical expenses related to not getting her medication in a timely manner. She never had to go to the hospital after she got out of jail at the end of any incarceration period and after being in the general population. She never had to go to the doctor because of being placed in a cell with other women. She never received treatment from her psychiatrist or other doctor after getting out of jail at the end of any two day stint. She is not receiving any medical or psychiatric treatment that she believes is related to serving the time in jail or the way she was treated in jail. *Sabo Deposition at pp. 85, 87-88, 94,*

102, 113 (App. Vol. II, pp. 358a, 360a-361a, 367a, 375a, 386a). Ms. Sabo simply cannot meet this serious or significant physical or emotional injury element of her claim.

The evidence also rebuts Ms. Sabo's allegation that she was subjected to a substantial risk of serious harm by not isolating her on every occasion that she presented herself to the Jail. Specifically, and as found by the district court:

> [T]he physical and psychological evaluations of Sabo upon arrival, the suicide watch, the regular distribution of Sabo's medication, the lack of grievance on the part of Sabo, and the actual nature of facilities available at the Northern Regional Jail all indicate that Canterbury and Spencer established and maintained reasonable conditions for Sabo in light of her mental and physical health, and the exigencies of time and circumstance.

Memorandum Opinion and Order Granting Motion for Summary Judgment at p. 17 (App., Vol. III., p. 1426a). Despite the Petitioner's assertions otherwise, the District Court did contemplate whether Ms. Sabo was at an increased risk because of a deprivation of a basic human need that was sufficiently serious. In a footnote on Page 8 of the Order, the District Court wrote "this Court agrees with the plaintiff that psychological complications that reasonably created a known risk of suicide are serious medical needs." *(App., Vol. III, p. 417a).* The District Court then stated that while plaintiff could show serious mental complications, there is insufficient evidence to show that any complications or increased risk were caused by the medication and housing decisions made at the jail. According to the District Court "the letters only show that Sabo had severe mental issues going into the Northern Regional Jail." Id. The Court continued,

> "Further undermining the causation element in this case is the fact that Sabo was only in the Northern Regional Jail for two days of every week during her period of incarceration. The parties agree that no suicide attempts occurred while she was actually in custody of the Northern Regional Jail. See: Pl.'s reply to defs.' Supp. Mot. at 11-12. Indeed, the plaintiff herself was even unsure if her suicide attempts were caused by conditions in the Northern Regional Jail." *(App., Vol. III, p. 1418a)*"

The evidence is clear that Ms. Sabo was provided with appropriate medical care and confinement conditions. Ms. Sabo admits that she saw a nurse on every admission to the jail. On every incarceration occasion, the nurse would perform physical and psychiatric evaluations, including whether or not Ms. Sabo was suicidal. *Prime Care medical documentation (App., Vol. II, pp. 429a-670a).* Additionally, the booking officer would question and evaluate the inmate at the time of booking to determine the appropriate classification. *Jail documentation (App., Vol. II, pp. 389a-428a).* Indeed, on several occasions, it was determined that Ms. Sabo was suicidal when she presented herself to the jail and was kept in a holding cell under suicide watch with 15 minute periodic observations by jail personnel. *Jail documentation (App., Vol. II, pp. 832a-860a).* There is simply no evidence that Ms. Sabo suffered any injury during any of her incarcerations. The evidence also shows that Ms. Sabo regularly received her medications while she was serving her sentence. *Prime Care Medical documentation (App., Vol. II, pp. 861a-892a).* Further, the jail personnel accommodated Sabo's purported medical conditions by agreeing to allow her to serve her 2 day per week sentence on Wednesdays through Fridays so that a psychologist could be available, if needed. Also, there was no record of any

grievance by Ms. Sabo of any kind, including failure to receive medications in a timely manner or pertaining to her housing classification. Additionally, at the Northern Regional Jail, if an inmate wants to see a doctor, they can simply press a button in their pod (jail area) and inform the guard of that need. *Canterbury Deposition at p. 45 (App., Vol. I, p. 170a).* There is no record that Ms. Sabo undertook this option to obtain medical treatment.

As the U. S. District Court stated in its Order Granting Summary Judgment, "...the plaintiff must do more than simply 'allege' a serious or significant physical or emotional injury resulting from a severe deprivation. Plaintiff must set forth specific facts showing that there were serious or significant deprivations that resulted in physical or emotional injuries, and that such injuries were caused by the alleged deprivation. The plaintiff does not make the requisite showing that her injuries were caused by deprivations in the Northern Regional Jail or that the deprivations themselves were severe." *Memorandum Opinion and Order Granting Summary Judgment at p. 8 (App. Vol. III, p. 1417a).*

Ms. Sabo cannot prove objectively that the Respondents deprived her of a sufficiently serious basic human need and acted in such a manner as to deprive Ms. Sabo of necessary and adequate medical care and/or confinement conditions, thereby endangering her health and well-being.

Turning to the Petitioner's allegation that the failure of policies and procedures by the Respondents at the Jail allegedly caused an objective and sufficiently serious deprivation of a basic human need of Ms. Sabo , the jail documentation regarding booking procedures as well as the initial nurse's evaluations upon booking indicate that there is a reasonable policy in place to evaluate the mental health and physical health of an inmate prior to housing assignment. *Jail*

documentation (App. Vol. II, 389a-670a). Additionally, there is a program at the Jail that if someone has a medical condition when they present to the jail, the jail will not accept them until they are evaluated by a physician and receive a doctor's approval for incarceration. *Canterbury Deposition at pp. 28-32 (App., Vol. I, pp. 153a-157a).* This policy was never applicable during the sentence at issue because Ms. Sabo never had an occasion where she presented at the Jail for a two day incarceration with a sufficiently serious medical condition. However, there is evidence of the application of this policy in Ms. Sabo's prior record from a previous incarceration. *Prime Care Medical Dispensary Cards (App., Vol. III, pp. 1003a-1006a).*

Turning to the issue of training[11], the employees of the Regional Jail receive extensive training which includes 120 hours of initial training with refresher training of 40 hours per year. This training includes intake/release procedures, inmate supervision/discipline, inmate rights and responsibilities and suicide/mentally ill inmates. *Jail documentation (App., Vol. II., pp. 671a-699a).* Respondent Canterbury testified "...We give a suicide prevention class so they have some sort of notion of what to look out for and we have had some suicides in the jails. That is one of the unfortunate circumstances of jails." *(App. 1, p. 157a).*

Additionally, Prime Care, the contract medical provider at the Jail is accredited by the National Commission of Correctional Health Care. This accreditation means that Prime Care's practices and procedures meet the requirements

---

[11] At page 10, letter (c) of the Petitioner's Petition, she alleges the Respondents "have failed to instruct, supervise, or train their employees and agents in such a manner as to assure the delivery of adequate medical care to Petitioner..." See: Petitioner's Petition for Writ of Certiorari at page 10.

of this National Commission. *Canterbury Deposition at p. 27 (App., Vol. I, p. 152a) and Certificates of Accreditation (App., Vol. III, pp. 1134a-1141a).* By virtue of the implementation of the policies and procedures required by the National Commission, Tammy Sabo's health care needs were specifically assessed and addressed each time she presented to the Jail to serve her sentence.

Accordingly, no rational finder of fact could determine that an objective deprivation of a basic human need occurred, let alone one that was "sufficiently serious" to rise to the level necessary to demonstrate cruel and unusual punishment. Based on the uncontroverted evidence developed in this matter, the District Court's Order, which was affirmed by the United States Court of Appeals for the Fourth District, finding that Ms. Sabo has failed to prove the objective prong of an Eighth Amendment was clearly within the applicable constitutional standards of Eighth Amendment law.

B. Lack of deliberate indifference by Spencer and Canterbury.

Ms. Sabo also cannot establish the second prong necessary for a §1983 claim; that is, that Canterbury and Spencer subjectively acted with a "sufficiently culpable state of mind." If and only if Sabo can establish the objective prong of her Eighth Amendment claim, should the Respondents' states of mind come into issue. Assuming *arguendo*, that Sabo had met the objective prong, Sabo must next demonstrate that the Respondents' respective states of mind were "sufficiently culpable." There is no evidence that Mr. Canterbury had any personal knowledge of Ms. Sabo and her incarceration. *Canterbury Deposition at pp. 56, 144 (App., Vol. I., pp. 181a, 269a).* Also, Mr. Spencer did not have any direct involvement in the day-to-day incarceration decisions regarding Ms. Sabo. *Spencer Deposition at pp. 51-*

52, 71, 81-83 (App., Vol. II., pp. 750a-751a, 770a, 780a-782a). Thus, the only manner for Ms. Sabo to prove the subjective prong of this claim is to prove that the Respondents acted with deliberate indifference. Estelle v. Gamble, 429 U.S. 97 (1976), Miltier v. Beorn, 896 F.2d 848 (4th Cir. 1990).

"'[D]eliberate indifference entails something more than mere negligence . . . [but] is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result.' It requires that a prison official actually know of and disregard an objectively serious condition, medical need, or risk of harm." De'Lonta v. Angelone, 330 F.3d 630, 634 (4th Cir. 2003). A prison official "must be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). "With deliberate indifference lying somewhere between the poles of negligence at one end and purpose or knowledge at the other, the Courts of Appeals have routinely equated deliberate indifference with recklessness." Id. at 836.

In this case, Ms. Sabo is asserting that she failed to receive medications in a timely and appropriate manner as well as not being placed in a suitable housing classification by placement in the general population instead of in isolation. The evidence relevant to this issue clearly indicates that Canterbury and Spencer did not exhibit deliberate indifference. Initially, there is no evidence that Canterbury had any knowledge of or involvement in the medication and housing issues of Ms. Sabo *Canterbury Deposition at p. 144 (App. Vol. I., p. 269a)*. Also, the evidence is that while Mr. Spencer may have had knowledge of the Dr. Goodrich letters of encouragement, he did not involve himself in providing medication to or making the specific housing decisions with

respect to Ms. Sabo. *Spencer deposition at pp. 81-83 (App. Vol. II, pp. 780a-782a).* Rather, the Respondents relied on staff to follow policies in making decisions regarding Sabo's incarceration.

As previously stated, Magistrate Humway entered a "Medication Order" in December 1999 ordering the Jail "...to comply with the medical orders/requests and provide prescription medication to Tammy Sabo from her treating physician Warren Goodrich, D.O. of Northwood Health Systems." *See: (App., Vol. I., pp. 72a-73a).* The developed evidence clearly indicates that Sabo was regularly provided her medications. *Prime Care Medical documentation (App., Vol. II., pp. 861a-892a).*

Ms. Sabo relies upon the two letters written by Dr. Goodrich addressed "To Whom It May Concern" to assert that Dr. Goodrich ordered that Ms. Sabo be placed in isolation during her confinement. This argument fails to meet the level of deliberate indifference for several reasons. Initially, the operative portion of the December 3, 1999 letter of Dr. Goodrich states "...it would be of utmost benefit if consideration could be given to keeping her [sic] isolation during the time of her confinement." *December 3, 1999 letter (App., Vol. III., p. 1142a)(emphasis supplied).* Additionally, Dr. Goodrich's letter of February 29, 2000 in its operative portion states, "...please encourage isolation in order to maintain this patient's current level of mental health." *February 29, 2000 letter (App., Vol. III., p. 1143a)(emphasis supplied).* These letters are clearly not orders, but are merely suggestions or encouragements. Dr. Goodrich's own testimony supports this position. Dr. Goodrich agreed that he encouraged consideration of isolation and that he had no authority to order isolation. *Goodrich Deposition at p. 89 (App., Vol. III, p. 1402a).*

The developed testimony in this case is that these letters were received and were considered by the staff at the Jail. Additionally, the staff members who reviewed the letters all uniformly indicated that these letters did not constitute orders by a physician. *Spencer Deposition at pp. 53-54, 61, 66-68 (App., Vol. II., pp. 752a-753a, 760a, 765a-767a) and Murrin Deposition at pp. 47-48, 57 and 103 (App., Vol. III, pp. 940a-941a, 950a, 996a).* The undisputed evidence is that on each occasion that Ms. Sabo presented herself for her intermittent incarcerations, the policy of the Jail was followed and Ms. Sabo was evaluated by trained correctional officers as well as trained medical personnel to determine the appropriate housing decision for Ms. Sabo on each particular occasion.

Also, as further consideration of Dr. Goodrich's letters, Shar Murrin, Director of Inmate Services for the Regional Jail, contacted Magistrate Humway to discuss the Medication Order and to inform Humway of the Jail's housing classification actions with respect to Tammy Sabo. Magistrate Humway agreed with the procedures of the Jail in this manner. *Murrin Deposition at pp.74, 77-78, 81 (App., Vol. III, pp. 967a, 970a-971a, 974a).*

Additionally, when considering the housing of an inmate truly diagnosed as agoraphobic as asserted in the letters of Dr. Goodrich, the uncontroverted evidence is that the most favorable housing for such an inmate would be in general population. Even Dr. Goodrich, upon hearing the description of the types of cells available to house Tammy Sabo, agreed that a cell in the general population would better serve her medical conditions than the "isolation" cells available at the Northern Regional Jail. *Goodrich Deposition at pp. 35-36 (App., Vol. III, pp. 1348a-1349a).*

Further, even prison officials who acknowledge a substantial risk to inmate health or safety "may be found free from Eighth Amendment liability, for failure to protect inmates from harm, if officials responded reasonably to risk, even if harm ultimately was not averted." *Farmer v. Brennan*, 511 U.S. 825, 844 (1994). "Whether one puts it in terms of duty or deliberate indifference, prison officials who act reasonably cannot be found liable under the cruel and unusual punishment clause." *Id.* at 845. Even if by some stretch of the imagination, Sabo successfully proved that the conditions of which she complains constituted a substantial risk to her health, Canterbury and Spencer's reasonable actions in implementing policies to assess and address any alleged risk as described above and through the repeated mental health evaluations would negate any liability under the Eighth Amendment.

Under the developed factual circumstances and as a matter of law, Ms. Sabo cannot provide evidence to show that there was deliberate indifference by Canterbury and/or Spencer as it pertains to providing medications and/or housing to Ms. Sabo. Under these circumstances, the Petitioner cannot prove the second subjective prong of an Eighth Amendment claim and summary judgment was appropriately granted on this issue.

II. The district court correctly held that Canterbury and Spencer were entitled to qualified immunity with respect to the claims asserted by Tammy Sabo pursuant to 42 U.S.C. §1983 in finding that even if Tammy Sabo had established a constitutional violation, the conduct of Canterbury and Spencer did not create a pervasive and unreasonable risk of constitutional injury.

In its Order Granting Summary Judgment, the district court noted that because the court had found that Ms. Sabo's constitutional rights were not violated, the analysis could end there. However the court continued and found that even had a constitutional right been violated, the conduct of the Respondents would still fall under the protection of the doctrine of qualified immunity. *Memorandum Opinion and Order Granting Motion for Summary Judgment at p. 15 (App., Vol. III., p. 1424a).*

It is well established that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Pritchett v. Alford*, 973 F.2d 307 (4th Cir. 1992).

In this case, Canterbury and Spencer were not directly active or involved in the complained of activities pertaining to the incarceration of Ms.Sabo. Therefore, in order for Sabo to defeat the application of qualified immunity to these two supervisors, Ms. Sabo must show "...1) the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a 'pervasive and unreasonable risk' of constitutional injury to citizens like the plaintiff; (2) the supervisor's response to that knowledge was so

inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices'; and (3) there was an 'affirmative causal link' between the supervisor's inaction and the particular constitutional injuries suffered by the plaintiff." Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994), *cert. denied* 513 U.S. 813 (1994). Based on the facts that have been developed in this case, Ms. Sabo cannot prove any of these elements and therefore the Respondents are accorded qualified immunity for the claims of Ms. Sabo.

The Shaw case stated that to establish a "pervasive and unreasonable risk of" constitutional injury, the alleged conduct must be so widespread that the conduct by the subordinates pose an unreasonable risk of harm to or constitutional injury to the protected party. Shaw at 799. In this case, there is absolutely no evidence of a pervasive and unreasonable risk of harm to Ms. Sabo and further there is no evidence that a pervasive and unreasonable risk of harm was so widespread that it posed an unreasonable risk of harm or constitutional injury to the protected party. Rather, as described above, the uncontroverted evidence is that Ms. Sabo was evaluated by health care individuals as well as correctional facility employees upon each of the 91 two-day incarcerations. Decisions were made regarding housing on each individual incarceration. The record clearly shows that the plaintiff was provided her medications on a regular basis. Even the Petitioner admits that she did not suffer any injuries while incarcerated or that she needed any mental health or medical attention during the five days of any week that she was outside of the Correctional Facility

The District Court found that "the choice to keep the prisoner in the general population was not a severe deprivation, but a choice made by prison personnel in the plaintiff's best interest." *(App., Vol. III, p. 1420a)*. The District Court found "the physical and psychological

evaluations of Sabo upon arrival, the suicide watch, the regular distribution of Sabo's medication, the lack of grievance on the part of Sabo, and the actual nature of facilities available at the Northern Regional Jail all indicate that Canterbury and Spencer established and maintained reasonable conditions for Sabo in light of her mental and physical health, and the exigencies of time and circumstance. Accordingly, both Canterbury and Spencer are protected by qualified immunity." *(App., Vol. III, p. 1426a).*

Simply, there is no evidence to show that Canterbury or Spencer had actual constructive knowledge that a subordinate was engaging in conduct that posed a "pervasive and unreasonable risk" of harm or constitutional injury to Sabo. Therefore, Ms. Sabo cannot show the first element necessary to defeat qualified immunity.

Ms. Sabo also cannot prove the second element necessary to defeat qualified immunity as she cannot demonstrate that the Respondents acted with deliberate indifference with respect to providing medication and determining housing for Sabo. In *Shaw*, the Court noted that "a plaintiff may establish deliberate indifference by demonstrating a supervisor's 'continued inaction in the face of documented widespread abuses'". *Shaw*, 13 F.2d at 799. There are no documented widespread abuses in this instance. The factual basis of the jail employees' actions and inactions toward Sabo have been described above and clearly indicate that there were policies and procedures in place to eliminate any unreasonable risk of harm or constitutional injury. The evidence described above is replete with information that Sabo received medical evaluations, her prescribed medications and was evaluated for a housing assignment on every occasion that she presented herself to the jail to serve her sentence.

As Ms. Sabo admits that she did not suffer injury and is therefore unable to show any injury suffered from her incarceration at the Jail, she also is unable to prove the third element described by the Court in *Shaw* relating to an affirmative causal link between the supervisor's alleged inaction and the alleged constitutional injury.

For the above stated reasons, the district court correctly found that the Respondents are entitled to the application of the doctrine of qualified immunity defeating Sabo's civil rights' claims against them.

III. Petitioner's misstatements of facts.

Despite the clear factual record related herein, Ms. Sabo posits several arguments within her petition which inaccurately present the evidence and testimony in this matter. Initially, the Petitioner presupposes that the Medication Order issued by Magistrate Humway encompasses and incorporates the December 3, 1999 and February 29, 2000 Goodrich letters which encourage isolation. As stated herein, all parties who reviewed these Goodrich letters, including the District Court, did not believe they constituted a medical order. Dr. Goodrich confirmed and acknowledged that the letters were an encouragement and that he had no authority to order isolation for Ms. Sabo. Thus, Ms. Sabo cannot establish this point and more importantly cannot establish that the Respondents interpreted the Medication Order in this manner such that the Respondents could have subjectively disregarded the Order. For this reason, Ms. Sabo's entire argument in this matter is seriously flawed.

Ms. Sabo improperly extends the argument that the February 29, 2000 letter was incorporated into the Medication Order into the next factual inaccuracy, alleging that the testimony of James Spencer establishes that orders are not routinely followed at the Northern Regional Jail. However,

this assertion is easily rebutted by examining the deposition testimony of Mr. Spencer.

First and foremost, Mr. Spencer did not testify that he believed the letters from Dr. Goodrich constituted an order or request. Mr. Spencer testified that he believed the letters from Dr. Goodrich constituted suggestions not requests. He also testified that he believed that the Northern Regional Jail made every attempt and did comply with Magistrate Humway's Medication Order. Mr. Spencer also believed that the letters authored by Dr. Goodrich were suggestions. *Spencer Deposition at Page 61 (App. Vol. II, pp. 760a).* Further, Mr. Spencer stated that if the order from the Magistrate would have stated they needed to house her by herself they would have complied. *Spencer Deposition at pp. 57, 61, 67-68 (App. Vol. II, pp. 756a, 760a, 766a-767a).*

The Petitioner cites page 57 of Spencer's deposition for the proposition that the jail routinely does not follow judicial orders. However, this assertion also is untrue. The testimony of Mr. Spencer at page 57 of his deposition does not pertain to the Medication Order and rather discusses the content of the Goodrich letters. Page 57 *(App., Vol. II, p. 756a).*

The cited testimony fails to establish that the Jail routinely fails to follow orders by physicians, the Court, or otherwise. Rather, Mr. Spencer testified that he considered Dr. Goodrich's letters to be suggestions which the jail considered but did not implement. Judge Stamp agreed that the letters were not a part of the medication order. "The plaintiff relies on the assumption that Dr. Goodrich's letters and Magistrate Humway's Order required Sabo's placement in isolation. This interpretation is contrary to the plain language of these documents. Dr. Goodrich's first letter asks the jail officials

to "consider" isolation and a second letter merely "encourages isolation." ..." *(App., Vol. III, p. 425a)*.

Additionally, Mr. Spencer did not acknowledge "that he should have obtained and followed a physician's medical opinion" with respect to the housing of Tammy Sabo, as improperly asserted by the Petitioner. *See: Sabo's Petition at p. 6.* There is no factual support cited by Ms. Sabo to support this assertion. Rather, Mr. Spencer testified that if there was a medical issue he would get with the medical staff. *Spencer Deposition at p. 54 (App., Vol. II., p. 753a).* The clear policy of the jail was to evaluate an inmate for medical purposes upon each incarceration and this evaluation of Sabo was performed by Prime Care nurses who provided medical care at the Jail. *Prime Care Receiving Screening/Health Assessment documents (App., Vol. II, pp. 429a-602a); Prime Care Intake Mental Health Screening documents (App., Vol. II, pp. 603a-670a).* This policy was followed and Ms. Sabo was evaluated each and every time she presented herself to the jail.

Petitioner next improperly alleges that the Northern Regional Jail engages in *ex parte* contact with the Court in an attempt to modify or usurp existing Court Orders, depriving inmates of due process. Again, the testimony relied upon in support of this assertion does not support this proposition. Ms. Sabo cites the testimony of Executive Director Steven Canterbury in this regard. In examining the cited portions, it is clear that Mr. Canterbury testified that judges and magistrates are informally consulted by telephone on administrative matters with regard to Court Orders. *Canterbury Deposition at pp. 67-68, 131 (App., Vol. I., pp. 256a, 766a-767a).*

If an issue regarding language in an Order cannot be resolved by conversation with the judicial officer, Mr.

Canterbury testified that it was the Jail Authority's policy to take the matter to Court. *See: Canterbury Depo. At pp. 128-129. (App., Vol. I, pp. 253a-254a).* Accordingly, it is clear that Mr. Canterbury did not testify that he has implemented a policy of contacting judicial officers in an attempt to modify or usurp existing court orders. Rather, Mr. Canterbury explained that a judge or magistrate may be contacted in order to clarify an administrative question. Therefore, Ms. Sabo's transparent attempts to create a risk of constitutional injury is contrary to the developed evidence and must fail.

CONCLUSION

The Respondents respectfully request that this Honorable Court deny the Petition for a Writ of Certiorari.

Respectfully Submitted

David L. Wyant, Esquire
Counsel of Record
Bailey & Wyant, PLLC
1219 Chapline Street
Wheeling, WV 26003
(304) 233-3100

Counsel for Respondents